IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 3RD OCTOBER 2006 / 11TH ASWINA 1928

ST.Rev..No. 306 of 2004

TA.467/2003 OF .KERALA STAT,TVM.
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REVISION PETITIONER/APPELLANT/ASSESSEE:

M/S. SARASWATHY JEWELLERY,
MAIN ROAD, KOLLAM-1.

BY ADV. SRI.S.ARUN RAJ

RESPONDENT/RESPONDENT/REVENUE:

STATE OF KERALA, REPRESENTED BY
CHIEF SECRETARY TO THE GOVERNMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER(SHRI GEORGEKUTTY MATHEW)

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 03/10/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C. N. RAMACHANDRAN NAIR &
K. M. JOSEPH, JJ.

S.T. REV. NO. 306 OF 2004

Dated this the 3rd day of October, 2006

JUDGMENT

C. N. Ramachandran Nair, J.

Question raised is whether the Sales Tax Appellate Tribunal was justified in sustaining the revised assessment under Section 19 of the KGST Act, demanding higher tax at compound rate from petitioner/assessee for 1999-2000. Petitioner/assessee, a jeweller who was remitting tax at compound rate under Section 7(1)(a) of the KGST Act for five years preceding the relevant year, applied for payment of tax for this year also at compound rate under 3rd proviso to Section 7(1)(a) which was granted by the Assessing Officer in terms of the application demanding tax of Rs.3,06,600.=. This was 110 per cent of the compound tax paid for the previous year, namely 1998 - 1999. However, the Assessing Officer later noticed that

the demand of tax was lower than the tax payable under 3rd proviso to Section 7(1)(a) of the Act and he, therefore, re-assessed the petitioner/assessee which led to the dispute in appeal. Tribunal upheld the assessment holding that under the 3rd proviso to Section 7(1)(a), petitioner/assessee was liable to pay tax at 110 per cent of the tax paid at compound rate for the previous year or 110 per cent of the tax payable based on return or Accounts of the dealer for the preceding year. It is against this order that the petitioner/assessee has filed this S.T.Rev.

2. Contention of petitioner is that 3rd proviso to Section 7 (1)(a) provides for payment of compounded tax at 110 per cent of the compounded tax paid for the preceding year only. Since the controversy pertains to interpretation of 3rd proviso to Section 7(1)(a), the said Section relevant for the year is extracted hereunder:

"**7. Payment of tax at compounded rates:-**
(1) Notwithstanding anything contained in Sub-

section (1) of Section 5:

(a) any dealer in gold or silver ornaments or wares may, at his option, instead of paying tax in accordance with the provisions of that Sub-section, pay tax at one hundred and twenty per cent of the tax payable by him as conceded in the return or accounts for the immediate preceding year and where any such dealer opens new branches the compounded tax payable by him in respect of each new branch for the first year shall be twenty-five per cent of the compounded tax for the principal place of business:

Explanation:- For the purpose of this clause "tax payable as conceded in the return or account for the immediate preceding year" means tax payable on the sales turnover under sub-section (1) of Section 5 and the tax payable on the purchase turnover under Section 5A:

Provided that where during the preceding year, the dealer had not transacted business for any period the tax payable for the whole year shall be calculated proportionately on the basis of the tax payable for the period during which such dealer had transacted business:

Provided further that where a dealer has paid tax under this Sub-section for the preceding year, the compounded tax to be paid by him for the succeeding year shall be one hundred and twenty per cent of such tax paid or one hundred and twenty per cent of the tax payable as per the return or accounts of the dealer for the preceding year whichever is higher:

Provided also that where such dealer has paid

compounded tax consecutively for a period of three years the compounded tax payable for the succeeding year shall be one hundred and fifteen per cent, and in the case of a dealer who has paid compounded tax consecutively for a period of five years the compounded tax payable for the succeeding year shall be one hundred and ten per cent of such compounded tax paid or payable by him for the immediate preceding year.

Provided also that where such a dealer acquires any running business or a branch of a business with respect to gold, silver ornaments or wares during the year, the amount of compounding tax payable in respect of such business shall be calculated in accordance with the provisions of this clause as if it were an independent business, taking into account the turnover conceded in the return or accounts thereof for the previous year with respect to that business or on the basis of the quantum of compounded tax fixed for the previous year in accordance with the second and third provisos, as the case may be."

3. The basic scheme of payment of tax at compounded rate is contained in the 2nd proviso to the Section above stated. Under this proviso, tax payable at compounded rate is either 120 per cent of the tax paid at compounded rate for preceding year or 120 per cent of tax payable as per the return or accounts of the

dealer in the preceding year whichever is higher. This only means that if there is increase in turnover attracting higher liability in the preceding year, tax at compounded rate payable shall be with reference to the tax payable as per the return or accounts of that year. There is no dispute on the interpretation of 2nd proviso to the Section under which petitioner has been taxed for several years. However, the question to be considered is whether the 3rd proviso provides for a different scheme for payment of tax at compounded rate. What we find from the 3rd proviso is that an incentive is provided therein in the form of rebate at five per cent from tax payable at compounded rate for dealers who have paid tax at compounded rate for three years preceding the relevant year and so far as dealers who have paid compounded tax for five years, the incentive is ten per cent. Apart from this incentive, which is in the form of rebate from

the actual tax payable, we do not find any difference from the tax liability at compounded rate payable under 2nd and 3rd provisos to the Section. Unlike in 2nd proviso, while fixing tax liability at compounded rate alternatively, the 3rd proviso does not use the words "whichever is higher". However, there is no reference in the 3rd proviso about the compounded tax payable as per return or accounts of the dealer. Since there is no specific reference to these matters in the 3rd proviso and the only reference in 3rd proviso is about the compounded tax paid in the preceding year, the counsel contended that the liability for succeeding year for the assessee is only 110 per cent of the compounded tax so paid in the preceding year. In other words, there is no provision in the 3rd proviso to demand tax at 110 per cent of the tax payable in the preceding year based on return or accounts of the dealer, is the contention. We do not think the absence of these specific provisions in the third proviso to the

Section convey a different scheme for payment of tax at compounded rate. The latter part of 3rd proviso provides for payment of tax at 115 or 110 per cent, as the case may be, of the compounded tax paid or payable by the dealer in the immediately preceding year. However, it is clear from the opening words of 3rd proviso that a dealer is entitled to the benefit of rebate under the proviso only if he has paid compounded tax for three years or five years, as the case may be. As on the date of making application for benefit under the 3rd proviso, no compounded tax will be due from the dealer for the immediately preceding year. Therefore, the tax referred as payable in the 3rd proviso can only mean tax payable based on return or accounts of the dealer for the preceding year, 110 per cent of which is payable, if the dealer has paid tax previously at compounded rate for the five years preceding the relevant year. We, therefore, uphold the view taken by tribunal that petitioner/

assessee is liable to pay compounded tax at 110 per cent of the tax payable as per return or accounts for the immediate preceding year. The S.T. Rev. is, therefore, dismissed on this issue.

4. Another contention raised is against the demand of interest under Section 23(3A) of the KGST Act. Even though counsel argued on merits, we do not think it proper for us to consider the issue because, tribunal has not considered or decided the issue. We, therefore, direct the tribunal to restore the appeal on this issue and decide the matter afresh after hearing the parties.

C. N. RAMACHANDRAN NAIR, JUDGE

K. M. JOSEPH, JUDGE

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